SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 899

PERRY L. DAVIS AND CLAUDE C. BLEDSOE,
Petitioners,

vs.

THE STATE OF IOWA.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinion Below.

The opinion of the Supreme Court of Iowa, adverse to these petitioners, is found in 230 Iowa 309, 297 N. W. 274.

Jurisdiction.

Jurisdiction is sought under Amendment Fourteen, Section 1, to the Constitution of the United States.

Questions Presented.

We would like to try to prove that the petitioners in this case were convicted upon paid, perjured testimony, but, feeling that question is not a Federal one, we limit ourselves to only one proposition—Was the jury coerced in

returning a verdict against them in violation of the due process provision which is part of Amendment Fourteen?

We refer to the records sent by the Supreme Court of Iowa to this Court, and particularly to the appellants' (these petitioners) abstract of record. On page 119 thereof are the affidavits of Carrie Gillen and Alta Gillen, and on page 120 thereof is the testimony of George G. Yeaman, a lawyer who has been practicing for many years in Sioux City, who swore that he heard the conversation between the bailiff and the jury. He said that the bailiff asked the jury, "What do you want, have you agreed?" One of the jurors stated, "No, we have agreed to disagree, and I wish you would tell the Court * * *." The bailiff then said, "You can't do that. Go on back up and work. You will have to agree on a verdict or you will have to stay there until Saturday at least." The said lawyer stated to one of the judges of the District Court of Woodbury County, Iowa, "Judge, that is reversible error." (R. 120, 121.)

The testimony of Mr. Yeaman is corroborated by the witness, Blair C. McPherran, one of the jurors, who stated that the bailiff said, when he was called and told in effect that the jury could not agree, "You can't do that. Go on back and go to work. You have to reach a verdict or you will have to stay there over Saturday." This occurred on Thursday afternoon. (R. 121.)

A Mr. N. P. Lang, salesman for the Sioux City Journal, of Sioux City, Iowa, stated that he was present and heard the bailiff ask this question, "Have you reached a verdict?" and the response was, "We have agreed not to agree", and the bailiff said, "You can't do that; you will have to go back until you reach a verdict if it takes you four days * * *." He saw, as he states, the attorney, George G. Yeaman, walk over to one of the judges of the District Court of Woodbury County, Iowa, and heard him quote the oath

that the bailiff took to the effect that he would not communicate with the jurors except to ask them if they had agreed upon a verdict, and stated that was reversible error. (R. 121, 122.)

A. C. Hatt, an attorney at law, of Sioux City, Iowa, who has practiced there for more than a score of years, stated that on April 11, 1940, he was in the attorneys' room, in connection with the court room of one of the judges of the District Court of Woodbury County, Iowa, and heard a buzzer ring from the jury room upstairs; that the bailiff came and he heard statements made; that the bailiff said "Have you agreed on a verdict?" and, "You can't do that, go on back and go to work until Saturday," and Mr. Hatt told the judge about it. (R. 122, 123.)

Honorable D. C. Browning, one of the judges of the District Court of Woodbury County, Iowa, gave an affidavit that he heard the bailiff say to the jury, "That isn't any verdict. You will have to agree. Go on back and go to work * * *." (R. 123.)

W. C. Gray, a court reporter in the Woodbury County Iowa District Court, swore that he heard someone say, "Have you agreed upon a verdict?", and the answer was, "We have agreed to disagree." (R. 123, 124.)

A Mr. Joseph A. Guttelman stated that on the date, April 11, 1940, he was in the attorneys' room and heard the bailiff say to the jury, "What do you want? Have you agreed?", and that the response was, "We have agreed to disagree. I wish you would tell the Court." (R. 124.)

These petitioners filed a motion for a new trial, elaborating the facts more in detail than are set forth herein, which was resisted by the prosecution, and in its resistance was set out the affidavit of the bailiff, which is shown on page 126 of the abstract, in which he, the bailiff, whom we accuse of coercing the jury, in conversation with the foreman, or

acting foreman, the latter person stating, "We have taken our final ballot", then said, "That's fine. Have you signed a verdict?" The answer was, "No we haven't signed the verdict. We have simply voted that we cannot get together." This bailiff, whom we accuse of coercing the jury, then made statements, according to his own affidavit, "Nothing doing. You can't do that. Go back and go to work on it some more." The foreman, or acting foreman, according to the affidavit of the bailiff, whom we are charging with violating his duties, then said, "We have voted and cannot get together, and they say they will not change their verdict. How long will we have to stay up here?" and the bailiff said, "I don't know." (R. 126.)

May it please this Honorable Court, we refer to the Northwestern Reporter, volume 297, page 274, at 275, in which it might seem that there was a question of fact regarding whether or not the jury was coerced in this case. In our opinion, conclusion and belief, it is thought by us there was not even any doubt about that, as shown by the record, which proves, as we contend, there was a denial of due process of law.

We further contend the affidavit of the bailiff, himself, is conclusive that he coerced the jury (R. 126.)

These petitioners were indicted and went to trial on Monday, April 1, 1940 (R. 28). It was the second Thursday afterwards that the bailiff coerced the jury, as we allege.

We contend that the petitioners were denied due process of law, the equal protection of the law, and upon reasoning demonstrably erroneous, which is shown by the record, and we cite as authority the case of *Powell* v. *Alabama,* 287 U. S. 45, 77 L. Ed., 158.

It is our wish that we could submit the evidence of the paid, perjured testimony along with the argument made.

Conclusion.

We may not clearly understand the Revised Rules but have tried hard to comply with them.

Respectfully submitted,

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